

Pro se Vincent Brady Allen is a North Carolina state court inmate currently incarcerated at Sampson Correctional Institution in Clinton, North Carolina. On December 9, 1987, Petitioner was convicted of first-degree rape and of taking indecent liberties with a child in the Superior Court of Anson County. Petitioner was sentenced to life imprisonment. The North Carolina Court of Appeals subsequently affirmed Petitioner's conviction and sentence. State v. Allen, 92 N.C. App. 168, 374 S.E.2d 119 (1988).

Petitioner placed the instant petition in the prison system for mailing on December 24, 2013, and it was stamp-filed on January 13, 2014. In a prior Section 2254 petition, filed on April 9, 2004, Petitioner challenged the same conviction he challenges in this petition. In an Order dated August 18, 2004, this Court dismissed Petitioner's petition as untimely.² See (3:04:cv183, Doc. No. 7). Thus, this is the second habeas petition filed by Petitioner challenging his prior state conviction. Pursuant to 28 U.S.C. § 2244(b)(3)(A), "[b]efore a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application." Petitioner must first obtain an order from the Fourth Circuit Court of Appeals before this court will consider any successive petition under 28 U.S.C. § 2254. Petitioner has not shown that he has obtained the permission of the Fourth Circuit Court of Appeals to file a successive petition. Accordingly, this successive petition must be dismissed. See Burton v. Stewart, 549 U.S. 147, 153 (2007) (holding that failure of petitioner to obtain authorization to file a "second or successive" petition deprived the district court of jurisdiction to consider the second or successive petition "in the first place").

² On January 20, 2005, the Fourth Circuit Court of Appeals dismissed Petitioner's appeal of this Court's denial of his motion to vacate. See (3:04:cv183, Doc. No. 11).

IT IS, THEREFORE, ORDERED that:

1. Petitioner's Motion to Proceed in Forma Pauperis, (Doc. No. 2) is **GRANTED**.
2. Petitioner's § 2254 petition is **DISMISSED** as a second or successive petition.
3. **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (when relief is denied on procedural grounds, a petitioner must establish both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right). Petitioner has failed to make the required showing.

Signed: May 8, 2014



Frank D. Whitney
Chief United States District Judge

